

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai – 400 001

Telephone No. 22853561

Representation No. N -F(N)-205-2013 dtd. 30/07/2013

Sanatan Dharam Sabha Redg.Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Davinder Singh

On behalf of the Respondent : 1. Shri. M.M. Bhonsle, DECC(F/N)
2. Shri. Lambhate, AAM CC(F/N)

Date of Hearing : 20/09/2013

Date of Order : 29/09/2013

Judgment by Shri. R.U. Ingule, Chairman

Sanatan Dharam Sabha Redg.1/89, Gr. Floor, Behind Bldg. no.11, Gurcharan Singh Dardi Marg, G.T.B. Nagar, Sion Kiliwada, Wadala, Mumbai – 400 037 has come before the Forum for dispute regarding refund of outstanding amount of earlier consumer of the premises paid by the new consumer at the time of having reconnection of electric supply pertaining to A/c 668-092-001.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 30/05/2013 for grievance dispute regarding refund of outstanding amount of earlier consumer of the premises paid by the new consumer at the time of having reconnection of electric supply pertaining to A/c 668-092-001. The complainant has approached to CGRF in schedule 'A' dtd. NIL (received by CGRF on 29/07/2013) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to direct licensee to refund the said amount of Rs. 51,710.00 with interest, which was paid under protest.

**Respondent, BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 Santan Dharam Sabha Regd., had applied for tapping meter vide requisition No. 91301091 dated 26.07.2012. The Undertaking as asked him to pay the outstanding amount of Rs. 51710/- which was in the name of earlier consumer ie. G Mitra Mandal as per outstanding register the OS. No. 772 of November 1999. The complainant had paid the same amount on 06.09.2012 under protest and obtained the reconnection of electric supply. Now the complainant has requested to refund the amount of Rs. 51,710/- with interest paid by him at the time of obtaining electric supply.
- 3.0 The earlier occupier of premises G Mitra Mandal was having two meters. Meter number D847781 was for residential purpose and meter number R840369 was for commercial purpose. G Mitra Mandal has made last payment of bill Rs. 23,372/- on 13.10.1997. Both the meters were removed by the Undertaking on 04.12.1998 for nonpayment of electricity dues. As on May 1999, the accumulated outstanding amounts to Rs. 50,897/- as per EDP Ledger statement.
- 4.0 G Mitra Mandal vide their Affidavit dtd. 16.07.2012 had handed over the possession of the said premises to Sanatan Dharam Sabha. The outstanding electricity charges on the premises of the earlier consumer pertaining to the same premises was due to be recovered hence new consumer/occupier of this premises was liable to pay the same.

REASONS

- 5.0 We have heard Shri Davinder Singh for the complainant and for the Respondent BEST Undertaking Shri M.M. Bhonsle, DECC(F/N) along with Shri Lambhate, AAM CC(F/N).
- 6.0 This Forum observes that the complainant contends that it is a body member of trust and the said premises was occupied by its Mandir. It had applied for tapping meter on 26/07/2012. At the relevant time, the Respondent BEST Undertaking directed the complainant to pay the arrears of Rs. 51,710.00 as an outstanding charges of the previous occupier. The said outstanding amount was standing in the name of M/S G. Mitra Mandal being previous occupier of the said premises. The complainant resisting paying such amount of Rs. 51,710.00 *inter-alia* on the ground that it had no relation with previous occupier and the said outstanding is not related with it, therefore not agreeing to pay the said bill. The complainant further resists the demand made by the Respondent BEST Undertaking being time barred under section 56(2) of Electricity Act, 2003.
- 7.0 In contra, the Respondent BEST Undertaking submits that the meter has been reconnected as per the application for tapping meter submitted by the complainant dtd. 26/07/2012 only after receiving the outstanding amount from the complainant. The said amount has been paid by the complainant in the name of previous consumer i.e. M/S G. Mitra Mandal. The earlier occupier was having two meters, one for residential and other for commercial. These two meters were removed by the Respondent BEST Undertaking on 04/12/1998 for non-payment of the outstanding amount. The said outstanding of Rs. 51,710.00 has been entered in outstanding register and duly audited.
- 8.0 While submitting an argument before this Forum, Shri Davinder Singh has vehemently submitted that the earlier premises related to outstanding was a pump house and the premises now occupied by the complainant has not been a pump house. As such the arrears of a different premises being directed by the Respondent BEST Undertaking to pay while entertaining my requisition application dtd. 26/07/2012. We however, find no merit in this contention raised on behalf of the complainant for a simple reason that there has not been even a whisper in this regard in the complaint placed before this Forum on Schedule 'A'. Besides it, the Respondent BEST Undertaking has successfully brought to our notice that the erstwhile occupier M/S G. Mitra Mandal was having two meters no. D847731 and R840369. One was used for residential purpose while the other was used for commercial purpose. The another aspect of this matter is, a liability transferred to the Complainant envisaged under a Regulation 10.5 has been in respect of the premises of the erstwhile occupier at the time when electricity charges were unpaid

- 9.0 We may further observe that in support of its claim Rs. 51,710.00 the arrears of the erstwhile occupier from the present complainant consumer, in reply given to Annexure 'C', the Respondent BEST Undertaking has relied on Clause 13.4 provided under its Departmental Terms and Conditions of supply approved by the MERC. This forum finds the reliance placed by the Respondent BEST Undertaking on this Clause 13.4 has been misplaced and miscomprehended one as this very clause ends with a stipulation that the action is to be taken as per the regulations. It is further significant to observe at this juncture that immediately thereafter in Clause 13.5, the gist of the said Regulation 10.5 has also been provided. However, this Forum finds that the Respondent BEST Undertaking has not taken a cognizance of the said related Clause no. 13.5 and proceeded to recover the entire arrears amount of Rs. 51,710.00 of the **erstwhile occupier** from the present complainant consumer, in violation of this clause No. 13.4 and 13.5 relied on by it.
- 10.0 In consider view of this Forum, the law laid down by the Hon'ble Division Bench of the Bombay High Court in a case of **M/s Namco Industries Pvt. Ltd. v/s State of Maharashtra and others in W.P. 9906/2010 decided on 16/10/2011**, gives a complete quietus to the present dispute. On going through the said judgment handed down by the Hon'ble Division Bench of the Bombay High Court, we find that once an electric connection is provided to the premises and later on disconnected the same, then any connection provided to the said premises would be necessarily a reconnection attracting the provisions provided under the Regulation 10.5 provided under the MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005 and not a new connection. In this case, their Lordships *inter-alia* held that the Distribution Licensee under Regulation 10.5 is entitled to assert its charge over the property in the hands of the new transferee and can recover unpaid charges subject to the permitted period specified therein. In a bare perusal of said Regulation 10.5, it is explicit that in case of the complainant, the liability to pay the charges in arrears of the **erstwhile owner / occupier** has been restricted to a maximum period of six months of the unpaid charges for the electricity supplied to the premises under consideration.
- 11.0 We therefore find that the present complainant consumer has admittedly paid the arrears amount of the **erstwhile owner / occupier** of Rs. 51,710.00 however under protest i.e. reserving its right to challenge, the same to recovery under the concerned law. As observed above, as envisaged under Regulation 10.5, the liability of the present complainant consumer has been to the extent of maximum period of six months of the unpaid charges of electricity supplied to the premises under consideration. It is therefore in our consider view, the Respondent BEST Undertaking has been entitled to recover the electricity charges in arrears in respect of the erstwhile M/S G. Mitra Mandal from the present complainant to the extent of six month of the unpaid charges for electricity supplied to its premises and not the entire charges in arrears of Rs. 51,710.00.

- 12.0 Before we part with this order, we may advert to one more contention vociferously advanced by the representative Shri Davinder Singh for the complainant that the claim of arrears paid by the complainant has been hit by the statutory provision provided under section 56(2) of the Electricity act, 2003. In this connexion, we find the said reliance placed by the complainant has been totally misplaced and miscomprehended one. The section 56 has been provided for the disconnection of supply in default of payment. Under sub section (2) of section 56, a coercive measure has been made available to the Distribution Licensee to recover the arrears of electricity charges from its present consumer by way of cutting off electricity supply on giving a notice within a period of two years from the date when such sum become *first due*. In the present matter before this Forum, the electricity supply provided to the erstwhile consumer i.e. M/S G. Mitra Mandal has been disconnected about 14 years back i.e. on 04/12/1998 for non-payment of the arrears. The present complainant has obtained the reconnection vide its requisition dtd. 26/07/2012. It is therefore blatantly manifest that the present complainant cannot take any recourse to sub section (2) of section 56 of Electricity Act, 2003.
- 13.0 In the aforesaid observation and discussion, the complaint is liable to allow partly. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. N-F(N)-205/2013 stands partly allowed.
2. The Respondent BEST Undertaking has been directed to prepare a fresh bill to claim charges, maximum for six months of the unpaid charges for electricity supplied to erstwhile consumer i.e. M/S G. Mitra Mandal, from the present complainant and accordingly to serve such electricity bill within a period of one month from the date of receipt of this order.
3. The Respondent BEST Undertaking hereby further directed to refund the excess electricity charges recovered from the complainant, if any, within a period of one month from the date of serving such fresh bill on it.
4. The compliance of this order be informed to this Forum within a period of fortnight there from.
5. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman